

The applicant's information disclosure statement dated 4/1/2010 has been considered and a copy has been placed in the file. Duplicate cited patents from previous prior art statements have been "cross-through" as shown in the IDS.

The status of the claims is as follows:

Claims 1-57 have been cancelled; and

Claims 58-71 (newly added) are herein addressed below.

Claims 58-71 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 58, lines 10-13 and claim 65, lines 10-12, the phraseology is not readily understood by the Examiner. The Examiner is unable to find support in the specification for the closure frame being defined by only three sides. It appears that the applicant is trying to further define an element within the specification without have support. Furthermore, as defined in the specification, how can the closure frame house the screen and then removing the screen without "disassembling" any of the closure frame.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140

F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 58-71 are further rejected on the ground of nonstatutory double patenting over claims 1-5, and 7-8 of U. S. Patent No. 6,446,696 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a retractable biased roller assembly attached along the leading edge of the roller assembly wherein the roller assembly is mounted within a framed opening having guides along a top and bottom portion of the opening.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claims 58-71 are further provisionally rejected on the ground of nonstatutory double patenting over claims 1-25 of copending Application No. 11/826,222. This is a

provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: a retractable biased roller assembly attached along the leading edge of the roller assembly wherein the roller assembly is mounted within a framed opening having guides along a top and bottom portion of the opening.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 58-71 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer (3,842,890) in view of Thumann (5,505,244). Kramer (3,842,890) discloses an assembly (140) comprising a frame (160, 146, 168, and 174) having four sides including two jambs (160 and 168), a header (146 having a guide track, see

figures 8 and 10)), and a threshold (44) having a guide track (see figures 1 and 9), a retractable roll panel (48) mounted within a housing (36 of one of the jambs (160 and 168), a handle (90) mounted to a leading edge of the retractable roll panel (48), and a latch assembly (92) for latching the retractable roll panel (48) in a closed position.

Kramer (3,842,890) fails to disclose the following: a retractable roll mesh panel and a spring biased roller.

Thumann ('244) discloses a retractable screen assembly comprising a retractable mesh screen panel (28) being spring biased (94). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Kramer ('890) with a spring biased (94) roller assembly as taught by Thumann ('244) since a spring biased panel allows the panel to be easily moved between open and closed positions.

With respect to claims 61, 62, 68, and 69, the method/process carries little to no patentable weight in apparatus claims since the elements cited above are capable of being attached via any assembly method, including radio frequency welding.[see M.P.E.P.]

Applicant's arguments with respect to claims 58-71 have been considered but are not deemed persuasive. It appears that the applicant's arguments are more limiting than that of the claims. The retractable screen of Kramer ('890) can be removed from the jamb pocket housing 36 via the opening in which it is rolled out while the closure frame housing remains assembled. Furthermore, the applicant argues the method of

removing the screen, yet the applicant's claims are directed towards the apparatus and not the process per se. Yet furthermore, the applicant argues the combination is not proper since there is no need for a vertical post. It appears that the applicant's arguments are more limiting than that of the claims since the applicant merely claims a "spring device" and as discussed in detail above, Thumann ('244) clearly discloses a spring device for a retractable screen.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Redman whose telephone number is 571-272-6835. The examiner can normally be reached on M-F from 8 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Mitchell, can be reached on 571-272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit 3634

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